IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO.881 OF 2006
IN
CRIMINAL APPEAL NO.169 OF 2005

Anil Pandurang Chimanpandey. ..Applicant.
Vs.
The State of Maharashtra.' ..Respondent.

Mrs. I. N. Koparkar for the Applicant.
Mrs.U.V. Kejriwal, APP. for the State.

CORAM: B.H.MARLAPALLE &
R.S. MOHITE, JJ.
DATE : 07th March, 2007

P.C.

1. Heard Mrs.Koparkar, the learned counsel for the applicant who is appellant in Criminal Appeal No.169 of 2005. The applicant has been convicted and sentenced for the offence punishable under Section-302 of the Indian Penal Code in Sessions Case No.447 of 2003 decided on 30.6.2004. The incident had taken place on 14.9.2003 and the applicant claims in this application for the first time that he was a juvenile as on that day, as per the definition under the Juvenile Justice (Care and Protection of Children) Act, 2000. She therefore, prays that additional evidence be taken on record or in the alternative issue directions to the Trial Court to record the additional evidence in support of the applicant's claim that he was a juvenile on the date of the incident. Reliance has been placed on the Constitution Bench decision in the case of **Pratap Singh Vs. State of Jharkhand and another reported in 2005 Supreme Court Cases (Cri.) 742.**

2. Mrs. Kejriwal, the learned A.P.P. states on the other hand that an affidavit has been filed and the preliminary investigation indicates that the claim made by the applicant regarding his date of birth is false.

3. In any case, when the State has disputed the date of birth of the applicant and as claimed by the applicant, it is necessary that evidence is recorded by the trial court regarding such a claim and the findings thereof by the Trial Court will have to be submitted to this court.

4. We therefore, allow this application partly and direct the learned 5th Adhoc Additional Sessions Judge at Pune to record the evidence and set out his findings on the limited issue of the applicant's claim that he was born on 1.6.1987. This shall be done as expeditiously as possible and in any case within a period of 8-weeks from the receipt of the writ from this court. The learned counsel for the applicant has fairly conceded that the applicant will have to bear the expenses in respect of the witnesses to be examined by him in support of his claim. Undoubtedly, the State is at liberty to cross examine the witnesses of the applicant and lead its own evidence to the contra.

(R.S. MOHITE, J.) **(B.H. MARLAPALLE, J.)**

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOBBY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO.684 OF 2006
IN
CRIMINAL APPEAL NO.169 OF 2005

Office notes, office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	**Court's or Judge's orders.**

Mrs. Indrayani Koparkar for the Applicant.

Mrs. U.V. Kejriwal, APP. for the State.

CORAM: B.H.MARLAPALLE &
R.S. MOHITE, JJ.
DATE : 07th March, 2007

P.C.

1. This application does not survive as subsequently the applicant has filed another bail application registered as Criminal Application No.756 of 2006.

2. Hence, this application is disposed off as such.

(R.S.MOHITE, J.) **(B.H.MARLAPALLE, J.)**